

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NORTHEAST BUILDING PRODUCTS  
CORPORATION,

Plaintiff,

v.

KB LOGISTICS LLC,

Defendant.

**CIVIL ACTION NO.**

**COMPLAINT**

Plaintiff, Northeast Building Products Corporation (“NBP”), by and through its undersigned counsel, files this complaint against defendant KB Logistics LLC (“KB”), and in support thereof, alleges the following:

**INTRODUCTION**

1. This is a breach of contract case arising out of KB’s failure and refusal to honor a trucking contract. NBP entered into a written contract with KB pursuant to which KB agreed to deliver NBP’s products to numerous locations in the United States for agreed upon flat rates guaranteed by KB for one year. KB is now refusing to honor the agreed upon rates. Instead, KB has sought to impose “surcharges” not permitted by the contract during the remaining six-month term of the contract that will cost NBP in excess of \$155,000 over the rates agreed to in the contract. NBP has sought quotes from other trucking companies, but the cheapest alternative will cost over \$137,207 more than the rates agreed to by KB.

### **THE PARTIES**

2. Plaintiff, Northeast Building Products Corporation, is Pennsylvania business corporation with its principal place of business and headquarters located at 4280 Aramingo Avenue, Philadelphia, Pennsylvania 19124.

3. Defendant, KB Logistics LLC, is a New Jersey limited liability company with its principal place of business and headquarters located at 105 John Ringo Road, Ringoes, New Jersey 08551.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. Section 1332 because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

5. Venue is proper in this district under 28 U.S.C. Section 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in Philadelphia, Pennsylvania, within this district.

### **FACTUAL BACKGROUND**

6. NBP is a Philadelphia based manufacturer of energy-efficient windows and doors. Founded in 1975, NBP distributes its products throughout the United States.

7. KB is a New Jersey company that provides freight transportation services including trucking.

8. On October 4, 2017, NBP and KB entered into a written contract (the "Agreement") pursuant to which KB agreed to deliver NBP's products by truck to 12 specific locations in the United States (Norcross Georgia, Elkridge Maryland, Chicago Illinois, Marlborough Massachusetts, Sayreville New Jersey, Bethpage New York, Bridgeport Connecticut, Troy Michigan, Irving Texas, Houston Texas, Aurora Colorado and Riverview Florida) for a flat rate

per truckload for each location as set forth in the Agreement. The Agreement also contains a flat rate for a delivery to “MI [Michigan] and then IL [Illinois]”. A true and correct copy of the Agreement is attached as Exhibit “A”.

9. The Agreement, which was drafted by KB, is for a one-year term and states “[t]his is a one year contract, effective date October 5<sup>th</sup> 2017. The contract maturity date is October 5<sup>th</sup> 2018.” *See* Agreement at page 3.

10. The Agreement specifically states, “[a]ll rates will be held for one year, unless the fuel prices go to four dollars per gallon.” *See* Agreement at page 1.

11. Fuel prices have never been four dollars per gallon or more during the term of the Agreement.

12. Nevertheless, and despite the express terms of the Agreement, commencing April 1, 2018, KB has refused to honor the flat rate pricing it guaranteed in the Agreement, and instead has sought unilaterally to impose a “surcharge” on each delivery in addition to the contractually agreed upon rates.

13. Specifically, KB called a surprise meeting with NBP in February 2018 at which KB first announced its intention to impose surcharges beginning April 1, 2018 and not to honor the flat rates guaranteed in the Agreement. When NBP objected to KB’s stated intention not to honor the Agreement, KB threatened NBP that if NBP did not accede to KB’s surcharges, KB would take actions to harm NBP, including delaying deliveries, not supplying sufficient quantities of trucks and/or damaging NBP’s relationship with its largest strategic customer which encompasses the twelve major trucking routes described in this complaint.

14. Based on anticipated deliveries during the remaining term of the Agreement (April 1, 2018 through October 5, 2018), the “surcharge” which KB has attempted to impose would increase trucking costs for NBP by at least \$155,399 over the rates guaranteed in the Agreement.

15. As a result of KB’s refusal to honor the terms of the Agreement, NBP sought rate quotes from numerous other trucking companies to make deliveries to the locations set forth in the Agreement from April 1, 2018 through October 5, 2018 (the remaining term of the Agreement). The lowest quote that NBP received from another company for this timeframe was \$137,207 more than the rates agreed to by KB.

16. To date, KB has sent NBP several invoices that included the surcharge. NBP has disputed these invoices, but has paid KB in full at the originally agreed upon rates set forth in the Agreement (*i.e.*, NBP has subtracted the surcharge but otherwise has paid KB for these invoices at the full contract rates).

17. After receiving the payments described in the preceding paragraph, KB called NBP and made additional threats.

18. As a result of these threats, even if KB were to relent and agree to honor the contract terms, or if the Court were to force KB to honor the rates guaranteed in the Agreement, NBP is no longer comfortable shipping its products with KB. KB could cause tremendous harm to NBP’s reputation and relationships with NBP’s customers by delaying deliveries and/or otherwise damaging NBP’s relationship with its largest strategic customer as KB has threatened to do.

**CLAIMS AND CAUSES OF ACTION**

**COUNT I**

**Breach of Contract**

19. NBP incorporates by reference the allegations in paragraphs 1 through 18 above.

20. NBP and KB are parties to a binding, written contract (the Agreement).

21. NBP has performed all of its obligations under the contract.

22. KB has breached the contract by charging “surcharges” not permitted by the contract and by threatening NBP with slow deliveries, damaged products and/or other harm to NBP if NBP does not pay the unauthorized surcharges.

23. KB’s conduct also constitutes anticipatory repudiation of the contract.

24. As a result of KB’s breach of contract, NBP has been harmed. Among other harm, NBP will incur trucking charges of at least \$137,209 more than the amounts set forth in the Agreement during the remaining term of the agreement by using the least expensive alternative trucking company from which NBP was able to receive a quote for delivering to the same locations set forth in the Agreement.

25. NBP is entitled to damages from KB in the amount of at least \$137,207, which NBP will need to pay to another trucking company from April 1, 2018 through October 5, 2018 in excess of the rates guaranteed by KB in the Agreement to cover as a result of KB’s breach and anticipatory repudiation of the contract.

**COUNT II**

**Declaratory Judgment**

26. NBP incorporates by reference the allegations in paragraphs 1 through 25 above.

27. As a result of KB's unilateral imposition of surcharges not permitted by the Agreement and KB's threats to harm NBP's business if it does not pay the unauthorized surcharges, there is an actual controversy between NBP and KB.

28. NBP seeks a declaratory judgment that it is no longer bound by the Agreement and is not required to use KB to ship NBP's products during the remaining term of the Agreement.

29. NBP also seeks a declaratory judgment that it is not required to pay any surcharges on any invoices for which KB already has made delivery and invoiced NBP. NBP will agree to pay for any delivery already made by KB at the originally guaranteed flat rates set forth in the Agreement.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Northeast Building Products Corporation respectfully requests that:

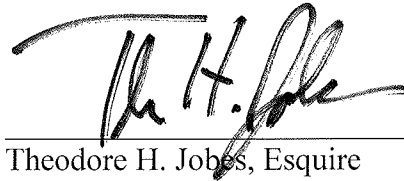
(1) The Court find and enter Judgment in Plaintiff NBP's favor against Defendant KB on Plaintiff's Claims for Relief, Counts I and II.

(2) The Court award Plaintiff NBP compensatory damages caused by Defendant KB's breach of contract in an amount to be proven at trial, for which KB shall be liable.

(3) The Court enter a declaratory judgment that Plaintiff NBP is no longer bound by the Agreement.

(4) The Court enter a declaratory judgment that Plaintiff NBP is not required to pay any surcharges imposed by Defendant KB.

- (5) The Court award Plaintiff NBP its costs in this civil action.
- (6) The Court award such other and further relief as the Court may deem just and equitable.

A handwritten signature in black ink, appearing to read 'Theodore H. Jobs', is written over a horizontal line.

Theodore H. Jobs, Esquire  
Pennsylvania Atty. No. 62165  
FOX ROTHSCHILD LLP  
2000 Market Street, 20th Floor  
Philadelphia, PA 19103  
(215) 299-2786  
(215) 299-2150 (fax)  
[tjobs@foxrothschild.com](mailto:tjobs@foxrothschild.com)

Attorney for Plaintiff, Northeast Building  
Products Corporation

Dated: April 23, 2018

# **EXHIBIT “A”**



KB LOGISTICS LLC  
PO BOX 627  
RINGOES, NJ 08551  
(908)-782-0927

October 4, 2017

This contract is between KB Logistics LLC, PO Box 627 Ringoes, NJ 08551 and Northeast Building Products, 4280 Aramingo Ave, Philadelphia, PA 19124.

All of the rates will be held for one year, unless the fuel prices go to four dollars per gallon.

GA \$ 1,380.00 1740 Corporate Dr #800, Norcross GA 30093

MD \$600.00 7393 Washington Blvd, Suite 101 Elkridge MD 21075

IL \$1,225.00 2500 Bradley Pl, Chicago IL, 60618

MA \$ 1,090.00 362 Elm St unit 1&2, Marlborough , MA 01752

NJ \$400.00 2500 Main St. ext., Sayreville, NJ, 08872

NY \$1000.00 999 Oyster bay RD, Unit 409, Bethpage, NY 11714

CT\$835.00 1085 Connecticut Ave Bldg. 5E Bridgeport, CT 06607

MI\$ 1,100.00 1400 Rankin Drive Troy MI 48083

DA\$ 2,600.00 8100 Springwood Dr. Irving TX 75063

HO\$ 2,674.58 747 N. Shepherd dr, Houston, TX 77007

DE \$ 3475.00 13250 Smith RD, Aurora CO 80011

TA\$1,928.00 4135 Crescent park dr. Riverview FL 33578

MI Then IL \*\*\$ 1,325.00

The only rate that will be changed is the Aurora, Co to \$3475.00.

KB LOGISTICS LLC  
PO BOX 627  
RINGOES, NJ 08551  
(908)-782-0927

NBP will supply a weekly schedule of all departures to K & B via email no later than Friday afternoon.

K & B will drop and hook each load with extra trailers at facility.

All trailers will be air ride.

K & B will have no less than 15 straps on each dropped trailer.

Departing trailers will be completed and dispatched by NBP within an hour of scheduled departure times.

NBP will Off-load trailers at delivery without driver assistance.


Delivery times should be no more than 3 hours once backed into the dock.

All straps will remain with K & B trailers upon delivery.

The current invoicing process via email will remain.

KB LOGISTICS LLC  
PO BOX 627  
RINGOES, NJ 08551  
(908)-782-0927

This is a one year contract, effective date October 5th 2017. The contract maturity day is October 5th 2018.

KB Logistics LLC 

Northeast Building Products \_\_\_\_\_